



5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 202 and 239

[Docket DARS-2018-0013]

RIN 0750-AJ39

**Defense Federal Acquisition Regulation Supplement: Definition of
"Information Technology" (DFARS Case 2017-D033)**

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to relocate the definition of information technology within the DFARS.

DATES: Effective [Insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Johnson, telephone 571-372-6100.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is relocating the definition of "information technology" from DFARS 202.101 to DFARS 239.7301. This specific definition of "information technology" was established in section 806, entitled "Requirements for Information Relating to Supply Chain

Risk," of the National Defense Authorization Act for Fiscal Year (FY) 2011 (Pub. L. 111-383). Section 806(b)(6) used the definition of "information technology" in 40 U.S.C. 11101(6) to define a "covered item of supply". On October 30, 2015, DoD published in the Federal Register (80 FR 67244) the final rule for DFARS case 2012-D050, Requirements Relating to Supply Chain Risk, incorporating this "information technology" definition into DFARS 202.101, Definitions, as opposed to DFARS 239.7301, Definitions. This rule will align this specific definition of "information technology" with DFARS 239.73, Requirements for Information Relating to Supply Chain Risk, as originally intended in Public Law 111-383.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is the Office of Federal Procurement Policy statute (codified at Title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or

administrative impact on contractors or offerors. This final rule is not required to be published for public comment because the rule merely relocates existing text within the DFARS. This rule affects only the internal operating procedures of the Government.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not add any new provisions or clauses or impact existing provisions or clauses. There are no reporting, recordkeeping, or other compliance requirements in this rule.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated

September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section II. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 202 and 239

Government procurement.

Jennifer Lee Hawes,
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Defense Acquisition Regulations System.

Therefore, 48 CFR parts 202 and 239 are amended as follows:

1. The authority citation for parts 202 and 239 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 202—DEFINITIONS OF WORDS AND TERMS

202.101 [Amended]

2. Amend section 202.101 by removing the definition of "Information technology."

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

3. Amend section 239.7301 by adding the definition of "Information technology" in alphabetical order to read as follows:

239.7301 Definitions.

* * * * *

Information technology (see 40 U.S.C 11101(6)) means, in lieu of the definition at FAR 2.1, any equipment, or interconnected system(s) or subsystem(s) of equipment, that is used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the agency.

(1) For purposes of this definition, equipment is used by an agency if the equipment is used by the agency directly or is

used by a contractor under a contract with the agency that requires—

(i) Its use; or

(ii) To a significant extent, its use in the performance of a service or the furnishing of a product.

(2) The term “information technology” includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources.

(3) The term “information technology” does not include any equipment acquired by a contractor incidental to a contract.

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